

REMARKS

The Applicants thank the Examiner for the thorough consideration given the present application. Claim 6 has been cancelled herein without prejudice to or disclaimer of the subject matter set forth therein. Claims 1-5 and 7-21 are pending. Claims 1-5 and 7-15 are amended, and claims 16 - 21 are added. Claims 1, 13 and 15 are independent. The Examiner is respectfully requested to reconsider the rejections in view of the amendments and remarks set forth herein.

Interview with Examiner

An interview was conducted between the Applicants' Representative, Carl T. Thomsen, Registration. No. 50,786, and Examiner John Holman on March 19, 2007. The Applicants' Representative appreciates the courtesy shown by the Examiner during the interview. If further discussion with the Applicants' Representative would accelerate the prosecution of the present application, the Examiner is encouraged to contact Carl T. Thomsen (direct line 703-208-4030) at a time of his convenience.

Acknowledgement of Information Disclosure Statement

It is gratefully appreciated that the Examiner has acknowledged the Information Disclosure Statement (IDS) filed on May 10, 2006.

Rejection Under 35 U.S.C. §102(b) and §103(a)

Claims 13-15 stand rejected under 35 U.S.C. §102(b) as being anticipated by Ennis, U.S. Patent No. 4,354,291. Claims 1-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ennis in view of Korfgan, U.S. Patent No. 4,614,449. These rejections are respectfully traversed.

Amendments to Independent Claim 13

While not conceding the appropriateness of the Examiner's rejection, but merely to advance the prosecution of the present application, independent claim 13 has been amended to recite a combination of elements directed to a livestock brushing device, including *inter alia*

the carrying means including a rigid frame and at least one flexible element, said at least one flexible element being fixed at one end directly to a rigid, non-movable structure and being connected at an opposite end to a rigid frame, said driving means having a lower end directly mounted on said rigid frame, ... the livestock brush for brushing external sides of an animal.

By contrast, as can be seen in Ennis FIGS. 10 and 12, this document merely discloses a vehicle washing apparatus with an upper end of motor 56 being attached to the lower side of spring coupling 100, with a lower end of the motor 56 being exposed.

Therefore, independent claim 13 is in condition for allowance.

Amendments to Independent Claim 15

While not conceding the appropriateness of the Examiner's rejection, but merely to advance the prosecution of the present application, independent claim 15 has been amended to recite a combination of elements directed to a livestock brushing device, including *inter alia*

wherein one end of the driving means faces the livestock brush and an opposite end of the livestock brush is exposed, ... the livestock brush for brushing external sides of an animal.

By contrast, as can be seen in Ennis FIGS. 10 and 12, this document merely discloses a vehicle washing apparatus with an upper end of motor 56 being attached to the lower side of spring coupling 100, with a lower end of the motor 56 being exposed.

Therefore, independent claim 15 is in condition for allowance.

Amendments to Independent Claim 1

While not conceding the appropriateness of the Examiner's rejection, but merely to advance the prosecution of the present application, independent claim 1 has been amended to recite a combination of elements directed to a livestock brushing device, including *inter alia*

the oblong livestock brush having a shaft and brush hairs projecting substantially radially therefrom when the oblong livestock brush is not being driven by the driving means; and ... the livestock brush for brushing external sides of an animal.

Regarding Ennis

The Examiner concedes that Ennis fails to disclose or make obvious “brush hairs projecting substantially radially therefrom when the oblong livestock brush is not being driven by the driving means”.

In addition, as previously argued, the Applicants submit that Ennis fails to teach or suggest a brush that can swivel to a substantially horizontal orientation as recited in independent claim 1. Figure 2 of Ennis, for example, shows pivoting of the brushes, but not to a substantially horizontal orientation for reaching higher-up surfaces of an animal. The Examiner has taken the position that the Ennis brushes are “capable of swiveling to a substantially horizontal orientation.” The Applicants respectfully disagree.

First, the mounting of the cylinder 68 in Ennis would prevent such movement. Specifically, as discussed in the paragraph bridging columns 6 and 7 of Ennis, the cylinder 68 is a shock absorber 68 to regulate and control tilting of the rotating brush 48 “to prevent the brush 48 from swinging or tilting too freely.”

Second, the length of the shock absorbers 68 of Ennis is not long enough to allow for swiveling of the brushes to a substantially horizontal position.

Third, as disclosed in Ennis at column 2, second and third full paragraphs, the brushes of the Ennis device merely move around front and rear corners and side contours of the vehicle. The shock absorbers 68 of Ennis are provided to absorb shocks that occur when the vehicle contacts the brushes. The contact of the brushes by a vehicle would not permit swiveling of the brushes to a substantially horizontal position. Referring to Figure 1 of

Ennis, when a vehicle is moved into engagement with the brushes 48, the force of the vehicle causes the brushes to pivot about the pivot rods 32. In addition, when the vehicle causes a force on the brushes, the shock absorbers 68 allow for pivoting about the pivot rods 32 well before the shock absorbers 68 will allow pivoting of the brushes. In view of this, no matter how high a force is applied to the brushes of Ennis, the brushes will pivot about the pivot rods 32 to follow the contour of the vehicle. In view of this, it is impossible for the brushes of Ennis to swivel to a substantially horizontal position as in the presently claimed invention.

With regard to the Examiner's position that the Ennis brushes can "tilt to swing in any direction upon engagement with the surfaces of the vehicle," the Applicants submit that this disclosure does not mean that the brushes of Ennis can swivel to a substantially horizontal position. This only means that the brushes of Ennis can follow the contours of the vehicle while keeping its generally vertical orientation. As can be seen in Figure 2 of Ennis, for example, the brushes of Ennis do not swivel to a substantially horizontal orientation during ordinary operation of the Ennis vehicle washing device. In addition, for the above explained reasons, it would not be possible to swivel the brushes of Ennis to a substantially horizontal orientation. Therefore, Ennis fails to anticipate or suggest independent claim 1 of the present invention.

Regarding Korfgan

The Examiner then points out that Korfgan et al. teach “brush hairs projecting substantially radially therefrom”. As can be seen, the Korfgan et al. reference merely teaches a brush to be manually used to clean internal portions of a bottle.

The Applicants respectfully submit that it is not proper to reject independent claim 1 of the present invention based on the combination of Ennis and Korfgan et al. for at least the reasons set forth below:

Regarding “**Analogous and Non-Analogous Art**”, the Manual of Patent Examining Procedure (MPEP) 2141.01 sets forth the following guidance for Examiners:

ANALOGY IN THE MECHANICAL ARTS

See, for example, *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) (Applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly “hook” which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of applicant’s endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The Commissioner further argued in the brief on appeal that a disengageable catch is a common everyday mechanical concept, however the court held that the Commissioner did not explain why a “catch” of unstated structure is such a concept, and why it would have made the claimed invention obvious.).

The Examiner has failed to demonstrate that any of Ennis, Korfgan et al., and the livestock brushing device of present invention are analogous, with respect to each other.

Regarding “**Level of Ordinary Skill in the Art**”, the MPEP 2141.03 includes the following guidance for Examiners:

FACTORS TO CONSIDER IN DETERMINING LEVEL OF ORDINARY SKILL

“Factors that may be considered in determining level of ordinary skill in the art include (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984).

Examiner has failed to show that one having ordinary skill in the art of livestock care, would find it obvious to combine teachings of a vehicle washing apparatus (Ennis) with that of a cleaning brush for cleaning insides of a bottle (Korfgen et al.) to arrive at the livestock brushing device for brushing external sides of livestock, as set forth in independent claim 1 of the present invention.

Regarding “**The Requirement to Establish a Prima Facie Case of Obviousness**”, the MPEP 2143 includes the following guidance for Examiners:

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See MPEP § 2144 - § 2144.09 for examples of reasoning supporting obviousness rejections.

THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION

“There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so >. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching requirement as a guard against using hindsight in an obviousness analysis). The teaching, suggestion, or motivation must be found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. “The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

Examiner has failed to show that one having ordinary skill in the art of livestock care, would find a suggestion or, find it desirable, or be motivated to combine teachings of a vehicle washing apparatus (Ennis) with that of a cleaning brush for cleaning insides of a bottle (Korfggen et al.) to arrive at the livestock brushing device for brushing external sides of livestock, as set forth in independent claim 1 of the present invention.

At least for the reasons above, the Examiner has failed to establish a *Prima Facie* case of obviousness to combine Ennis and Korfggen. Therefore, the Applicants respectfully submit

that it is not proper for the Examiner to combine Ennis and Korfgen et al. to reject the invention of claim 1. Reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. § 103(a) are therefore respectfully requested.

Reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. § 103(a) are therefore respectfully requested.

Dependent Claims

The Examiner will note that dependent claim 6 has been cancelled, dependent claims 2-5, 7-12, and 14 have been amended, and dependent claims 16-21 have been added.

The Applicants submit that these claims are allowable due to their dependence on independent claims, as well as due to the additional recitations in these claims.

In view of the above amendments and remarks, the Applicants respectfully submit that claims 1-5 and 7-21 clearly define the present invention over the references relied on by the Examiner. Reconsideration and withdrawal of the Examiner's rejections under 35 U.S.C. § 102 (b) and 103(a) are therefore respectfully requested.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. It is believed that a full and complete response has been made to the outstanding Office Action, and that the present application is in condition for allowance.

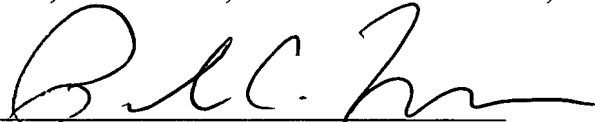
If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone Carl T. Thomsen (Reg. No. 50,786) at (703) 208-4030 (direct line).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly extension of time fees.

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Respectfully submitted,
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